

<b>Form 1120</b> Department of the Treasury Internal Revenue Service	<b>U.S. Corporation Income Tax Return</b> For calendar year 2017 or tax year beginning _____, 2017, ending _____, 20 _____ ▶ Go to <a href="http://www.irs.gov/Form1120">www.irs.gov/Form1120</a> for instructions and the latest information.	OMB No. 1545-0123 <b>2017</b>
<b>A Check if:</b> 1a Consolidated return (attach Form 851) <input type="checkbox"/> b Life/nonlife consolidated return <input type="checkbox"/> 2 Personal holding co. (attach Sch. PH) <input type="checkbox"/> 3 Personal service corp. (see instructions) <input type="checkbox"/> 4 Schedule M-3 attached <input type="checkbox"/>	<b>TYPE OR PRINT</b>	<b>B Employer identification number</b>  <b>C Date incorporated</b>  <b>D Total assets (see instructions)</b> \$ _____  <b>E Check if:</b> (1) <input type="checkbox"/> Initial return (2) <input type="checkbox"/> Final return (3) <input type="checkbox"/> Name change (4) <input type="checkbox"/> Address change
Name _____ Number, street, and room or suite no. If a P.O. box, see instructions. _____ City or town, state, or province, country, and ZIP or foreign postal code _____		

# Corporate Due Date

- Calendar year C corp return due date per PL 114-41 (7/31/15)
  - Normal = 4/15
  - Extended = 9/15 (through 2025); 10/15 after 2025
  - Starting with 2016 returns
- Feb 2017 – Form 7004 instructions and IRS website
  - Extended = 10/15
- TD 9821 (7/20/17) – Reg §1.6081-3T – this is a permanent change.

# QSBS and Performance of Health Services Page 3-2

PLR 201717010 (4/28/17)

- C corp developed tool to provide info to healthcare providers to detect X.
- Gives results to doctors.
- C doesn't diagnose or treat, although must have a doctor on staff for quality control
- IRS – C is not violating QSBS requirement for 80% of assets used in qualified T or B
  - Performing health services is not qualified.

So, if all other req of §1202 met, it's QSBS!

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# Corporation Hit with Accumulated Earnings Tax Page 3-3

- CCA 201653017 (12/30/16)
  - Corp owned by one s/h who contributed 8 investment p/s to it.
  - IRS – “§533(b) if a corporation is a mere holding or investment company, that fact shall be prima facie evidence of the purpose to avoid income tax with respect to the corporation's shareholders.”
    - Here, that is C – income is investment income.
  - Lack of liquidity by C is not a reason not to pay dividend.
    - Can use §565 consent dividend approach!

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# Deduction v Disguised Dividend

*Home Team Transition Management, TC Memo 2017-21 (3/28/17)*

- Cash-method C corp
- Owned by two couples
  - 2 work for HT and receive wages
- HT owned by another C corp
  - Paid management fees to parent
  - No mgmt. work done though
- Reg. 1.162-7(b)(1) – “Any amount paid in form of compensation, but not in fact as purchase price of services, is not deductible. An ostensible salary paid by a corp may be a distribution of a dividend on stock.”

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# Nonqualified Preferred Stock & §351(a)

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- CCA 201716045 (4/21/17)
    - P contributed Sub 2 stock to Sub 1 in exchange for Sub 1 Class A and B stocks
      - Treated Class A stock as falling under 351(a)
      - IRS disagreed – is nonqualified preferred stock under §351(g)(2)(A)
        - Doesn't participate in Sub 1's growth “to a significant extent”
        - Any “illusory right” to share in appreciation is not real.
    - Moral – take a careful look at the nature of stock to be sure falls under §351(a) (if desired to).

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# Wrong Return Can Be Right Return for SL

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- *New Capital Fire, Inc.*, TC Memo. 2017-177 (9/11/17)
  - OC and NC believed they did F reorg in 2002
  - As required, NC includes OC info on 2002 return.
  - 10 years later, IRS issues notice deficiency to OC for 2002
    - §6501(c)(3) – no return so statute limitations open
  - Court – even if reorg invalid, OC filed – is part of NC's return
    - Sufficient info on NC's 2002 return to know that OC's tax liability reported.

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# Pilot §355 Ruling Program

- Rev. Proc. 2017-52 (9/21/17)
  - 18-month pilot
  - IRS accepting ruling requests on general tax consequences of intended tax-free stock distributions
  - Procedures for the rulings
  - 46 possible representations included
  - Comments sought by 12/31/17

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## Reg. §1.385-2 One-Year Delay

- Notice 2017-36
  - IRS plans to amend 1.385-2 (documentation regs) to only apply to interests issued after 2018.
  - Also seek comments
- NOTE: Per Notice 2017-38, TD 9790 (§385) identified as burdensome.
  - Further changes possible.

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## Failed Reformation of a Transaction

*Makric Enterprises, Inc.*, No. 16-60410 (5<sup>th</sup> Cir., 3/27/17)

- Makric – C corp owned by 3 people
- M, holding company, owns Alpha
- TS3 wants to buy Alpha
- 1<sup>st</sup> plan
  - Dissolve M and have s/h sell Alpha stock to TS3
- 2<sup>nd</sup> plan
  - M sells Alpha stock to TS3
- But M s/h thought they were selling their M stock

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## *Makric* - continued

- TS3 ok with any approach
- M s/h reported as if sold M stock
- IRS assessed tax against M, Inc.
- Tax Court and 5<sup>th</sup> Cir held for IRS
  - \$2.8 million of tax + penalty of \$567,956
  - Reformation n/a here
    - Unable to show “clear, exact, and satisfactory evidence” of mistake.
    - “Desire” for different approach not sufficient.

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## *Makric* penalty upheld

- Per court
  - Transaction not complicated
  - M and s/h had advice of a few practitioners
  - Should have showed paperwork to CPA rather than telling CPA an incorrect version of what was in the paperwork.
- Questions:
  - Why didn't CPA ask for the documents or a summary from legal counsel?
  - Why were entities structured as C rather than LLC or p/s or S?

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# Transferee Liability - §6901

- *Kardash*, No. 16-14254 (11<sup>th</sup> Cir. 8/4/17)
  - K was 1.6% s/h in a construction corp
  - Lots of \$ made in housing boom, drop during bust
  - 2 major s/h siphoned off almost \$120 million
  - K rec'd transfers and almost \$3 million of dividends
  - IRS argued dividends fraudulent transfers under state law (Florida)
  - K argued dividends were really past bonuses
    - But, 1099-DIV issues and he paid tax at dividend rate
  - Tax Ct and 11<sup>th</sup> Circuit agree

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## Court sympathetic, but ...

“Kardash was not a villain. By all accounts, he was a victim of the fraud conducted by his friends and coworkers at FECF, Ralph Hughes and John Stanton. In perpetrating that fraud, however, they transferred funds from FECF to Kardash that rightly belonged to the IRS, and the law of Florida requires that he pay those funds back.”

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# Moral of the case ...

- Employee/shareholder needs to ask questions
  - K also had title of president.
- Confirm that taxes paid
- If you think \$ is a bonus, don't accept the 1099-DIV
  - Issue for K was dividend wasn't a transfer for value rec'd by the corporation, so easier to find it to be a fraudulent transfer under state law.

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## Continuing Corporation and Tax Liabilities Page 3-12

*Eriem Surgical, Inc.*, No. 14-3540 (7<sup>th</sup> Cir., 12/16/16)

- Micrins Surgical ends 3/13/09
  - Owes \$400K to IRS
  - Husband owns 40%
- Eriem forms and takes over M's operations
  - Wife owns 100%
- IRS levies E's bank account; E argues wrongful levy
- D Ct and 7<sup>th</sup> Circuit hold for IRS
  - finding that W serves as a proxy for H indicates "there has not been a complete change of ownership."

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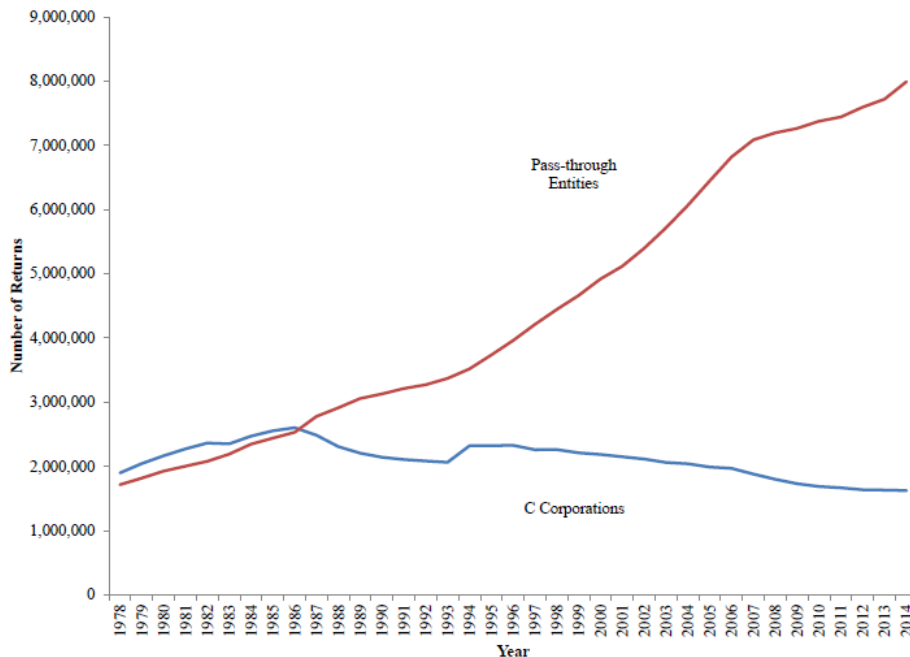
# Business Entity Data

- JCT, *Present Law and Data Related To The Taxation Of Business Income* (JCX-42-17, 9/15/17)
  - Background on taxation of business entities
  - Lots of data – types, gross receipts, net income, §179 usage, accounting method, more.

<https://www.jct.gov/publications.html?func=startdown&id=5021>

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**Figure 2.—Number of C Corporation Returns Compared to the Sum of S Corporation and Partnership Returns, 1978-2014**



Source: JCT staff calculations on SOI data.

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